

REMARKS

Claims 13, 14, 21, and 22 have been cancelled without prejudice. Claims 1, 20, and 23 have been amended. Upon entry of this paper claims 1-12, 15-20 and 23-34 will be pending and under consideration.

Claim 1 has been amended to introduce the limitation of previously pending claim 14. Claim 20 has been amended to introduce the limitation of previously pending claim 22. Claim 23 has been amended to modify antecedent basis in view of the cancellation of claim 22. Applicants believe that the amendments introduce no new matter.

Rejections Under 35 U.S.C §103(a)

According to the outstanding Office Action, claims 1-15, 17-30 and 32-34 presently stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,402,739B1 (the "Neev Patent") in view of U.S. Patent No. 5,810,801 (the "Anderson Patent"). In addition, claims 16 and 31 presently stand separately rejected under 35 U.S.C. §103(a) as being unpatentable over the Neev Patent in view of the Anderson Patent, and allegedly admitted prior art.

According to the Office Action, the Neev Patent, which appears to be the primary reference, discloses, among other things, a method of treating acne in a preselected region of mammalian skin having at least one acne lesion disposed therein. The Office Action indicates that the Neev Patent fails to teach or suggest cooling the skin above the preselected dermal region to a temperature below about 60°C. It appears that the Office is relying upon the teachings of the Anderson Patent to make up for the deficiencies in the Neev Patent.

It is well settled that, in order for a rejection to be proper under 35 U.S.C. §103(a) the subject matter taken as a whole must have been obvious to the skilled artisan at the time the invention was made. Applicants submit, for the reasons discussed in more detail below, that the teachings of the Neev Patent and the Anderson Patent fail to teach the claimed subject matter

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taken as a whole. Accordingly, Applicants request that the rejection be reconsidered and withdrawn.

Applicants enclose with this paper a Declaration under 37 CFR 1.131 executed by the named inventors of the claimed subject matter, which effectively removes the Neev Patent as a reference for use against the claimed invention. Applicants note, however, that the Neev Patent claims priority to USSN 60/111,436 filed December 8, 1998 (the "Neev Priority Document"), a copy of which is attached hereto as Exhibit A. The Neev Priority Document, however, fails to provide any teaching whatsoever of a method for treating a sebaceous follicle disorder, for example, acne. For example, although the Neev Priority Document discusses a laser based method for removing skin tissue (see, for example, page 2, line 13), rejuvenating skin (see, for example, page 26, line 7) and removing hair (see, for example, page 28, line 12), Applicants submit that the Neev Priority Document fails to teach, suggest or even infer using such a method for treating a sebaceous follicle disorder.

In view of the foregoing, Applicants submit that the Neev Patent is not available as prior art for use in combination with the Anderson Patent. Furthermore, to the extent that the Office relies upon the Neev Priority Document, Applicants submit that the Neev Priority Document, like the Anderson Patent, fails to teach, suggest or even infer a method of treating a sebaceous follicle disorder, for example, acne. Accordingly, Applicants submit that the combined teachings of the Neev Priority Document or the Anderson Patent fail to teach the claimed subject matter taken as a whole, i.e., a method of treating a sebaceous follicle disorder.

Furthermore, Applicants submit that there would have been no motivation based on the teachings of the Neev Priority document and the Anderson Patent to combine their respective teachings to produce a method of treating a sebaceous follicle disorder. For the sake of argument only, even if there was sufficient motivation for the skilled artisan to combine their respective teachings, Applicants submit that the skilled artisan relying on these documents would have had no reasonable expectation of providing a method of successfully treating a sebaceous follicle disorder.

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Applicants submit that, at the time the claimed invention was made, the claimed invention would not have been obvious to the skilled artisan relying on the teachings of the Neev Patent, the Neev Priority Document, and the Anderson Patent, either alone or in combination. In view of the foregoing, Applicants respectfully request that this rejection be reconsidered and withdrawn.

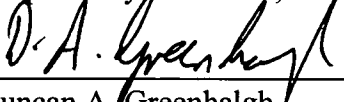
CONCLUSION

Applicants believe that all pending claims are in condition for allowance. Early favorable action is respectfully solicited. The Examiner is invited to telephone the undersigned to discuss any outstanding issues.

Dated: October 21, 2003

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Respectfully submitted,



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